

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Courts
Southern District of Texas
FILED

October 11, 2018

David J. Bradley, Clerk of Court

No. 17-41252
1:15-cv-144



A True Copy
Certified order issued Oct 11, 2018

Steph W. Cayer
Clerk, U.S. Court of Appeals, Fifth Circuit

JESUS CERVANDO LOPEZ,

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Southern District of Texas

O R D E R:

Jesus Cervando Lopez, Texas prisoner # 1784120, appeals the district court's denial of his Federal Rule of Civil Procedure 60(b)(6) motion as an unauthorized second or successive 28 U.S.C. § 2254 application in part and as moot in part. Counsel appointed to represent Lopez on appeal filed a motion for leave to withdraw and a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). See *Dinkins v. Alabama*, 526 F.2d 1268, 1269 (5th Cir. 1976). Lopez has filed a response, in which he argues that he received ineffective assistance of habeas counsel in the district court.

Lopez is required to obtain a certificate of appealability (COA) to appeal the denial of his Rule 60 motion. See *Cardenas v. Thaler*, 651 F.3d 442, 443 (5th Cir. 2011); *Ochoa Canales v. Quartermann*, 507 F.3d 884, 888 (5th Cir.

2007). His notice of appeal is construed as a request for a COA. *See* FED. R. APP. P. 22(b). A COA may be issued only if Lopez makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

A review of counsel’s *Anders* brief and the relevant portions of the record reveal no nonfrivolous issue for appellate review. *See United States v. Flores*, 632 F.3d 229, 232–34 (5th Cir. 2011). Further, “ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief” in a § 2254 proceeding. 28 U.S.C. § 2254(i). Accordingly, counsel’s motion for leave to withdraw is GRANTED, and counsel is excused from further responsibilities herein. The request for a COA is DENIED.

/s/ Stephen A. Higginson

STEPHEN A. HIGGINSON
UNITED STATES CIRCUIT JUDGE

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
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NEW ORLEANS, LA 70130

October 11, 2018

Mr. David J. Bradley
Southern District of Texas, Brownsville
United States District Court
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Room 1158
Brownsville, TX 78520

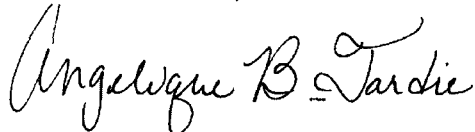
No. 17-41252 Jesus Lopez v. Lorie Davis, Director
USDC No. 1:15-CV-144

Dear Mr. Bradley,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By:
Angelique B. Tardie, Deputy Clerk
504-310-7715

cc w/encl:

Mr. Jesus Cervando Lopez
Ms. Jessica Michelle Manojlovich
Mr. Edward Larry Marshall
Mr. Gregory Don Sherwood